

The Commonwealth of Massachusetts

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PROPOSED DRAFT TIME STANDARDS

The Housing Court Department is inviting comments on **Proposed Standing Order No. 1-04 (3-26-04 Revision) Time Standards** for Cases Filed in the Housing Court Department.

The Proposed Standing Order No. 1-04 (3-26-04 Revision) was developed by a Committee comprised of the Honorable Jeffrey M. Winik, Associate Justice, Boston Division, Chair; Honorable Anne Kenney Chaplin, First Justice, Southeastern Division; Robert L. Lewis, Clerk-Magistrate, Boston Division; Robert G. Fields, Acting Clerk-Magistrate, Western Division; Paul J. Burke, Clerk-Magistrate, Northeastern Division; William S. Weiss, First Assistant Clerk-Magistrate, Worcester County Division; and Harvey J. Chopp, Court Administrator, Housing Court Department.

Before finalization of the Standing Order, you are invited to offer any suggestions or comments you may wish to provide the Committee.

The text of the Proposed Standing Order follows this message. Comments may be sent by e-mail to housingcourtstandards@jud.state.ma.us or mailed to **Associate Justice Jeffrey M. Winik, Boston Division of the Housing Court Department, 24 New Chardon Street, Boston, MA 02114.**

All written comments must be received by **May 15, 2004.**

PROPOSED STANDING ORDER NO. 1-04 (3-26-04 Revision)

**TIME STANDARDS FOR CASES FILED IN THE
HOUSING COURT DEPARTMENT**

I. Adoption of Standing Order

The Housing Court Department recognizes that the fair and efficient administration of justice requires that all cases that come before the Housing Court receive the timely attention necessary to secure a just and expeditious determination of each claim. It is for this reason that these time standards have been promulgated as a standing order of the Housing Court.

The time standard goals are aspirational in nature and are intended to bring 90% of all cases to disposition within the time frames set forth herein. However, each case is unique and each judge must, consistent with applicable statutes and the rules of court, exercise sound judgment in a manner that affords the parties a fair opportunity to develop and present their claims to the court. These time standards are not intended to limit the discretion of Housing Court judges to develop individualized case management plans crafted to address the distinct needs of litigants. The successful implementation of these time standards presupposes that the Housing Court will have adequate judicial and administrative resources to meet the goals set forth herein.

ACCORDINGLY,

1. The Housing Court Department hereby adopts these time standards and case management procedures as **Housing Court Standing Order No. 1-04**.
2. This Standing Order applies to all actions filed in the Housing Court.
3. This Standing Order applies to all divisions of the Housing Court.
4. The timing for the completion of the case, from filing to trial, settlement, or dismissal, shall be calculated from the date of filing the application or complaint.

II. Authority

This standing order is promulgated by the Chief Justice of the Housing Court Department pursuant to his statutory authority and responsibility for case flow management. G.L. c. 211B, § 10 and G.L. c. 185C, § 8A.

III. Implementation of Standing Order

All civil and criminal cases filed in the Housing Court on or after July 1, 2004, shall be subject to the provisions of this Standing Order.

- All civil and criminal cases pending in the Housing Court as of June 30, 2004, shall be subject to the provisions of this Standing Order only to the extent a judge incorporates specific provisions in a supplemental scheduling order.
- The Housing Court shall schedule case management status conferences, pre-trial conferences, motion hearings and trials on its own initiative, or as reasonably requested by the parties, consistent with this Standing Order.

IV. Track Designation

At the time of filing, all cases shall be assigned to one of the following tracks according to the type of case:

- SP Track (Summary Process Action)
- CA Track (Civil Action)
- SC Track (Small Claims Action)
- CL Track (Supplementary Process/Collection Action)
- CR Track (Criminal Action)

V. Scheduling Order Preparation and Notification

While the Court will endeavor to provide notice, **the ultimate responsibility for obtaining information from the Court about the designation of the case and the corresponding scheduling order shall rest with each party.** The parties and counsel shall receive notice as follows:

- **Civil Actions (CA Track)**

- The Court will prepare a Scheduling Order for each civil action in accordance with the provisions of this Standing Order.
- At the time initial action is filed, the Court will provide the plaintiff with a Scheduling Order. The plaintiff shall be required to serve the Scheduling Order on the defendant(s) with the complaint or initial pleading. The Court shall also send the Scheduling Order to the defendant(s) upon the filing of a notice of appearance.
- A party or counsel who appears in the action after the issuance of the Scheduling Order shall have the responsibility of obtaining a copy of the order. The Court shall make copies of the order available to the parties and counsel of record as requested by them, at any time.

- **Criminal Actions (CR Track)**

- At the time a criminal summons and complaint issues, the Court will prepare a Scheduling Order in accordance with the provisions of this Standing Order.
- At the time a criminal summons and complaint issues, the Court will provide the commonwealth, city or plaintiff with a Scheduling Order. The commonwealth, city or plaintiff shall be required to serve the Scheduling Order on the defendant(s) with the criminal summons and complaint. The Court shall also send the Scheduling Order to the defendant(s) or counsel upon the filing of a notice of appearance.

- **Summary Process Actions (SP Track)**

- Because the time deadlines for pleadings, motions, discovery and trial are governed by and set forth in the Uniform Rules of Summary Process, the Court will not prepare a Scheduling Order for each summary process case.
- Each party must refer to the Uniform Rules of Summary Process.

- **Small Claims Actions (SC Track)**
 - Because the time deadlines for pleadings, motions, discovery and trial are governed by and set forth in the Uniform Small Claims Rules, the Court will not prepare a Scheduling Order for each small claims case.
 - Each party must refer to the Uniform Small Claims Rules.
- **Supplementary Process/Collection Actions (CL Track)**
 - Because collection actions rarely require motions, discovery or trials, the Court will not prepare a Scheduling Order for each supplementary process action.
 - The court shall provide the parties with written notice of all hearing and status hearing dates in accordance with this Standing Order.

VI. SCHEDULING ORDERS

The following schedules shall be mandatory except upon written waiver, amendment or modification granted by a Judge. Documents filed outside the established time limitations without the Court's approval shall have no binding effect on the Court or the parties.

- **Summary Process (governed by Uniform Rules of Summary Process)**
 - **Pre-trial motions (Rule 6)**
 - Filed and served by the first Monday after the entry day.
 - Heard on the date the case is originally scheduled for trial (however, if the defendant requests, **Motions to Dismiss**, if filed by the entry day, shall be heard on the Thursday (or other day designated by the division) following the entry date.
 - All late filed motions shall be made and heard only in such manner, at such time, and with such notice as the court may, in its discretion, permit or direct.
 - **Motions to Strike Discovery**, if filed by the original trial day, shall be heard on the Thursday (or other day designated by the division) following the original trial day.

- **Discovery (Rule 7)**
 - All discovery must be filed **and** served by the first Monday after the Monday entry day (unless otherwise permitted by the Court).\
 - Responses to discovery must be served no later than ten (10) days after receipt (unless otherwise permitted by the Court).
- **Trial (Rule 2(c) and 7b)**
 - **Non-Jury**
 - Trial is automatically scheduled for hearing on the **second** Thursday after the entry date (divisions may designate an alternate or additional day for trials).
 - If discovery is properly filed **and** served, the trial is automatically postponed and rescheduled for the date two (2) weeks from the original trial date.
 - If trial is continued by court order, the trial shall be rescheduled to commence within sixty (60) days from the date of the order.¹
 - **Jury**
 - Trial shall be rescheduled to commence within ninety (90) days from the original trial date.²
- **Findings of Fact and Ruling of Law (non-jury)**

In all summary process actions tried upon the facts without jury, the court shall find the facts and state its conclusions of law thereon as follows:

 - **Possession at issue and no counterclaims:** within thirty (30) days from the date the case is taken under advisement.
 - **Possession and counterclaims at issue:** within sixty (60) days from the date the case is taken under advisement.

¹ The ability to meet this time standard depends on the availability of resources including judges, courtrooms and session clerks.

² See footnote 1, *supra*.

- **Possession moot, but other claims and counterclaims at issue:**
within one hundred and twenty (120) days from the date the case is taken under advisement.
- **Civil Actions (governed by Massachusetts Rules of Civil Procedure)**
 - **Within three months (90 days) from date complaint filed:**
 - Service completed by all parties.
 - All returns of service filed.
 - If service is not made upon any defendant, the action shall be dismissed as to that defendant, without prejudice unless otherwise ordered by the First Justice upon request filed within 90 days after the complaint is filed.³
 - **Within two months (60 days) from date complaint filed:**
 - Case Management Status Conference held.⁴
 - **Within five months (150 days) from date complaint filed:**
 - Rule 12, 19 and 20 motions served and heard.⁵
 - **Within seven months (210 days) from date complaint filed:**
 - All discovery requests served.
 - **Within eight months (240 days) from date complaint filed:**
 - All discovery and depositions completed.⁶

³ The dismissal will be entered automatically by the Clerk-Magistrate under the authority of this Standing Order and notices given as required.

⁴ At the Case Management Status Conference, the case shall be reviewed and, if appropriate, a case-specific scheduling order shall be established which may or may not follow exactly the presumptive guidelines of the scheduling order issued when the case was filed. All parties shall appear in person or through counsel at the Case Management Status Conference. All counsel attending are required to be fully familiar with the case and have complete authority regarding all aspects of the conduct of the litigation, including authority to settle or compromise the claims. Any party who does not appear shall be defaulted or nonsuited.

⁵ If a party who has been served has not filed a response to the complaint, that party shall be defaulted and notification of default shall be forwarded to the other parties. Where appropriate, cases shall be ordered for assessment of damages.

⁶ A party may not have responded to timely filed requests for discovery at this juncture and accordingly a motion to compel production of that discovery would be appropriate. It is expected that all such motions will be filed within 14 days from the date the discovery was due, and that further responses will be filed in accordance with the court's order.

- **Within eleven months (330 days) from date complaint filed:**
 - Rule 56 motions served and heard.⁷
- **Within twelve months (360 days) from date complaint filed:**
 - Date set for final pretrial conference and for submission of joint Rule 16 pretrial memorandum.
 - Firm trial date set for trial to commence within one month from date of pretrial conference.
- **Findings of Fact and Ruling of Law (non-jury)**
 - In all civil actions tried upon the facts without jury, the court shall find the facts and state its conclusions of law thereon within 120 days from the date the case is taken under advisement.
- **SMALL CLAIMS ACTIONS (governed by Uniform Small Claims Rules)**
 - **Magistrate Hearings**
 - Trial before clerk magistrate to be scheduled to commence within 60 days from the date the complaint is filed.
 - Decision rendered by clerk magistrate within 60 days from the date the case is taken under advisement.
 - **Appeals**
 - **Non-jury trial**
 - Trial to be scheduled to commence within 60 days from date appeal filed.
 - The court shall find the facts and state its conclusions of law thereon within 60 days from the date the case is taken under advisement.
 - **Jury Trial**
 - Trial to be scheduled to commence within 90 days from date appeal filed.

⁷ Certain summary judgment motions may be sufficiently complex to require additional judicial time to render a decision. The case should nonetheless continue on track. The status of the summary judgment motion should be brought to the attention of the judge at the pre-trial conference for his or her consideration and action.

- **SUPPLEMENTARY PROCESS/COLLECTION ACTIONS**
 - Hearing to be scheduled and held within 60 days from date complaint is filed.
 - The Court shall render a decision on issue appropriate orders within 7 days from hearing date.
 - Status hearing to be scheduled and held within six months (120 days) from initial hearing date, and every six months (120 days) thereafter, until case is dismissed.⁸
- **CRIMINAL ACTIONS**⁹
 - **Show Cause Determination**
 - Hearing to be scheduled and held within one month (30 days) from date criminal complaint filed.
 - Clerk magistrate to render probable cause determination within 7 days of hearing.
 - **Arraignment**
 - Arraignment to be scheduled and completed within one month (30 days) from date criminal summons and complaint issues.
 - **Discovery**

⁸ If the plaintiff does not appear at the status hearing, the case will be dismissed.

⁹ The Massachusetts Rules of Criminal Procedure do not explicitly govern criminal proceedings in the Housing Court. See, Mass.R.Crim.P., Rule 1(b). Nevertheless, the Housing Court looks to those rules for guidance where appropriate.

This time standard shall be applied with due consideration of the “carrot and stick” approach that has been traditionally applied by the Housing Court in handling criminal matters. Basically, and for obvious reasons, the Housing Court is more interested in bringing housing up to code requirements rather than assessing fines or jailing defendants for building, sanitary, fire or other safety code violations. The Housing Court is a court of “compliance” rather than a court of “punishment.” The primary purpose of code enforcement is to protect the public health and safety rather than to punish past violations as criminal offenses, **Commonwealth v. Hadley**, 351 Mass. 439, 442, 222 N.E.2d 681, 683 (1966).

If it is found that the offense charged was not willful, intentional, reckless or repeated, the proceeding shall not be deemed criminal and no record of the case shall be entered in the probation records. G.L. c.185C, §19; **Commonwealth v. Olivo**, 369 Mass. 62, 66-68, 337 N.E.2d 904, 908 (1975).

The time standards pertaining to criminal actions shall be applied by the court with due consideration for the above stated principles, and with due consideration to the possibility that certain code enforcement cases should be deemed civil and made subject to the civil action time standards provisions.

- Discovery to be completed within three months (90) days from date of arraignment.
- **Pre-trial Conference**
 - Pre-trial conference to be scheduled and held within four months (120 days) from date of arraignment.
- **Trial**
 - Firm date to be set for trial to commence within six months (180 days) from date of arraignment.

VII. Disposition of Inactive Cases

- Matters Pending for More than One Year Without Docket Activity
 - In March of each year there shall be a call in each division of the Housing Court of all cases pending in which there has been no activity reflected on the docket for more than 12 months. The clerk shall, after consultation with the first justice regarding cases which appropriately might be excluded from such calls, prepare lists for such calls, and shall give seasonable and appropriate notice by mail to all interested parties or their attorneys of record. The notice in each case shall state that the matter is being called for dismissal or other appropriate order, and that failure of a party or his attorney to answer may result in dismissal of the matter.
- Appeals Pending for More than Three Months Without Assembly or Record.
 - In each calendar quarter there shall be a call in each division of the Housing Court of all appeals pending for more than 3 months in which the record has not been assembled. The clerk shall, after consultation with the first justice regarding cases which appropriately might be excluded from such calls, prepare lists for such calls, and shall give seasonable and appropriate notice by mail to all interested parties or their attorneys of record. The notice in each case shall state that the matter is being called for dismissal or other appropriate order, and that failure of a party or his attorney to answer may result in dismissal of the appeal.

VI. AMENDMENT, MODIFICATION OR WAIVER OF ORDERS

- **Scheduling Orders**

- Amendments, extensions or other modifications of any of a scheduling order may be ordered by the Court on its own motion as the interests of justice require, but otherwise may be requested by a party only upon motion and for good cause shown. A motion to amend or modify the scheduling order shall be in writing and set forth in detail the facts upon which the moving party relies in support of said motion. Motions to continue trials are disfavored, and may be allowed only for good cause shown. Hearings on scheduling order motions shall be held only if deemed necessary by the assigned judge.

- **Standing Order**

- Nothing in this standing order shall limit the Housing Court's authority, in appropriate cases where the interests of justice require, or other good reasons appear, to stay, waive or alter provisions of this Standing Order, or to order that a particular case not be or not remain subject to the time standards set forth in this standing order.